United States Department of Labor Employees' Compensation Appeals Board

S.S., Appellant	
and) Docket No. 13-1008) Issued: November 26, 2013
U.S. POSTAL SERVICE, POST OFFICE, New Orleans, LA, Employer) issued: November 20, 2013) _)
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted on the Record

ORDER REMANDING CASE

Before: RICHARD J. DASCHBACH, Chief Judge COLLEEN DUFFY KIKO, Judge PATRICIA HOWARD FITZGERALD, Judge

On March 19, 2013 appellant filed a timely appeal from a September 20, 2012 Office of Workers' Compensation Programs' (OWCP) decision which denied her reconsideration request on the grounds that it was untimely filed and failed to present clear evidence of error. The appeal was docketed as number 13-1008.

In this case, in a decision dated June 27, 2011, OWCP granted appellant a schedule award for two percent additional impairment for the right arm and zero percent impairment for the left arm. Appellant subsequently requested reconsideration in an appeal request form dated June 22, 2012 and submitted additional medical evidence. The postmark on the envelope containing the request in the record was illegible. In a September 20, 2012 decision, OWCP denied appellant's request for reconsideration finding that it was not timely filed and failed to present clear evidence of error.

The Board finds that appellant's request for reconsideration was timely. Section 10.607(a) of the implementing regulations provide that an application for reconsideration must be received within one year of the date of OWCP decision for which review is sought. The Board notes that this became effective August 29, 2011. For decisions issued on or after June 1, 1987 through August 28, 2011, there is still a one-year time limit for requesting reconsideration. OWCP procedures provide that the application for reconsideration must be mailed to OWCP

¹ 20 C.F.R. § 10.607(a).

within one year of the date of OWCP's decision for which review is sought,² as determined by the postmark on the envelope, if available. Otherwise the date of the letter should be used.³ In this case, the postmark on the envelope containing the reconsideration request is illegible. The Board notes that the last merit decision was dated June 27, 2011 and appellant's request for reconsideration was dated June 22, 2012, within one year from the June 27, 2011 merit decision. The Board finds that OWCP improperly reviewed the evidence under section 8128 and the clear evidence of error standard. As appellant made a timely request for reconsideration of the last merit decision, which was dated June 27, 2011, OWCP should have reviewed her request under the standard for a timely request, as opposed to the standard for untimely requests.⁴

The Board will set aside OWCP's September 20, 2012 decision and remand the case for an appropriate final decision on appellant's claim under 5 U.S.C. § 8128(a).

IT IS HEREBY ORDERED THAT the September 20, 2012 decision is set aside and remanded.

Issued: November 26, 2013 Washington, DC

Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge Employees' Compensation Appeals Board

² FECA Procedure Manual, Part 2 -- Reconsiderations, *Time limitations*, Chapter 2.1602.4(e) (October 2011).

³ *Id.* OWCP procedures require that an imaged copy of the envelope that enclosed the request for reconsideration should be in the case record. If there is no postmark, or it is not legible, other evidence such as a certified mail receipt, a certificate of service and affidavits may be used to establish the mailing date. In the absence of such evidence, the date of the letter itself should be used. *Jack D. Johnson*, 57 ECAB 593 (2006).

⁴ Section 10.607(b) states that OWCP will consider an untimely application for reconsideration only if it demonstrates clear evidence of error by OWCP in its most recent merit decision. The reconsideration request must establish that OWCP's decision was, on its face, erroneous. 20 C.F.R. § 10.607(b).